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INTERNATIONAL LEGAL INSTRUMENTS AND MECHANISMS

(Chapter 39 of Agenda 21)

Report of the Secretary-General

SUMMARY

Given the importance of the principles of international law for sustainable development and of taking an integrated approach to international law in all courts, tribunals, other dispute settlement bodies, and other forums responsible for the interpretation of treaties, it is suggested that the principles and concepts contained in the report of the Expert Group meeting on the Identification of Principles of International Law for Sustainable Development be further studied and developed in relation to the formulation of new instruments, including soft-law instruments, and the interpretation and application of existing instruments, related to sustainable development. The Commission on Sustainable Development may wish to return to this subject for fuller consideration at its sixth session.

The attention of the Commission is also drawn to the recommendations of the Expert Group on the Identification of Principles of International Law for Sustainable Development.

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INTRODUCTION

1. The present report has been prepared by the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat in its capacity as task manager of chapter 39 of Agenda 21 1/ on international legal instruments and mechanisms. It focuses specifically on two issues: new and emerging issues, and trends. A more comprehensive review of developments related to chapter 39 since 1993, when the Commission on Sustainable Development at its second session reviewed this chapter, is contained in the addendum to this report.

I. NEW AND EMERGING ISSUES IN THE FIELD OF SUSTAINABLE DEVELOPMENT

2. New issues related to the role and effectiveness of non-legally binding (in other words, "soft") law in the integration of environment and development within a legal framework, to environmental impact assessment, and to compliance and enforcement are emerging in the field of sustainable development. Some of the more specific developments now emerging relate to the following areas: (a) development of a protocol on biosafety, in the field of the safe transfer, handling and use of genetically modified organisms (GMOs), focusing on the transboundary movement of such organisms; (b) the Berlin Mandate 2/ (United Nations Framework Convention on Climate Change) 3/ which launches a new process for strengthening developed country commitments to reducing greenhouse gas emissions beyond the year 2000, through the adoption of a protocol or another legal instrument; (c) provision of financial assistance and technical expertise to assist developing countries in integrating environment and development in the planning process; (d) safe management of radioactive waste; (e) a new waste assessment framework within the revised London Convention, applicable to all legal marine environment protection instruments, independent of the source of the wastes; (f) the prior informed consent (PIC) procedure; (g) forests (Ad Hoc Intergovernmental Panel on Forests established by the Commission on Sustainable Development at its third session); (h) chemical safety, sound management of chemicals, and development of a globally harmonized system of classification and labelling of chemicals; and (i) issues of liability and compensation for environmental damage and of application of environmental norms by military activities. (More information on these issues is contained in the addendum to this report.)

3. Other specific areas that have been mentioned as deserving of future attention include, inter alia, persistent organic pollutants and heavy metals; joint implementation and tradable permits; protection of marine biodiversity; protection of inland waters; protection of the soils; mountain ecosystems; introduction of genetically modified and alien organisms; child labour; and environmental impact assessment. The drawing up of two broader, procedural treaties have also been suggested: one would specify the obligations with respect to assisting developing countries in the implementation of international legal instruments; the other could contain guidelines for compatibility between trade and environment law.

II. PRINCIPLES OF INTERNATIONAL LAW FOR SUSTAINABLE DEVELOPMENT

4. Another emerging issue is identification of the principles and concepts that underlie international law for sustainable development. This has come about primarily for the following two reasons: the recognition that sustainable development has gained currency as a legitimate topic of international law, and the need to understand the legal implications of sustainable development. Furthermore, and perhaps of greater significance, is the integrating effect of sustainable development which makes it pertinent and legally relevant to other areas of international law, including, for example, environmental law and trade law.

5. Principles may perform a variety of functions in the international legal process, including (a) assisting in the development of new legal instruments; (b) assisting in the interpretation and application of treaty and other obligations; (c) establishing norms of a substantive nature; (d) establishing obligations of a procedural nature; and (e) assisting in the elaboration of detailed obligations. The role of principles in the interpretation and application of existing legal obligations, particularly treaty obligations, is especially important.

6. In 1995 both the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat and the United Nations Environment Programme (UNEP), acting jointly and in full consultation, organized two meetings of experts that addressed this issue. UNEP convened the first in a series of three meetings of its Expert Group Workshop on International Environmental Law Aiming at Sustainable Development, in response to decision 18/9 (1995), adopted by the Governing Council of UNEP at its eighteenth session. 4/ The outcome of all three Workshop meetings will be presented to the meeting of senior government officials to review the Montevideo Programme II and, subsequently, to the Governing Council of UNEP at its nineteenth session in 1997.

7. The Department for Policy Coordination and Sustainable Development of the United Nations Secretariat organized a meeting of the Expert Group on the Identification of Principles of International Law for Sustainable Development, within the framework established by the Rio Declaration on Environment and Development 5/ and Agenda 21, to identify basic principles of international law for sustainable development, consider possible classifications of such principles, and assess their potential practical implications in a legal context, including their role in the interpretation and application of existing international law in the field.

8. It was felt that the principles of interrelationship and integration (as reflected in principles 3 and 4 of the Rio Declaration) formed the backbone of international law in the field of sustainable development. They reflect a recognition of the need to move away from the treatment of fields of international law (relating, for example, to human rights, economic relations, environmental protection) as being self-contained, towards the development of general rules of international law in which those separate fields retain their distinct character but are subject to an interconnected approach.

9. The report of the Expert Group on the Identification of Principles of International Law for Sustainable Development is available to the Commission as a background document.

10. Pursuant to a decision of the Inter-Agency Committee on Sustainable Development at its 7th meeting (February 1996), the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat as task manager of chapter 39, drawing on the work of UNEP in the area of environmental law, will undertake an assessment of the implementation of the principles of the Rio Declaration in international and national law. It will be assisted in this undertaking not only by the work of the Geneva-based Expert Group but also by an International Environmental Conference on Codifying Rio Principles into National Legislation, which is being sponsored and organized by the Government of the Netherlands in May of this year.

III. TRENDS IN THE FIELD OF INTERNATIONAL LEGAL INSTRUMENTS AND MECHANISMS RELATED TO SUSTAINABLE DEVELOPMENT

11. With the increase in the number of relevant international legal instruments for sustainable development, there has been a growing trend towards identifying the basic concepts and principles underlying sustainable development. This is important for a number of reasons already specified, among which may be highlighted the need to advance understanding of what sustainable development means in relationship to international law and the importance of certain "benchmark principles" for guiding the drafting of national legislation, the interpretation of existing law and negotiations of future international law.

12. There has been a related trend towards the conclusion of "framework" conventions, which provide an opportunity to establish certain principles in law but leave sufficient flexibility for negotiations on more specific provisions, to be developed as the international consensus matures and as new scientific and technical data illuminate the need to act.

13. Concern exists, as expressed in this report and more fully in the report of the Secretary-General (E/CN.17/1996/18 and Add.1) on chapter 8 (Integrating environment and development in decision-making) of Agenda 21, about the need to reduce the reporting burden placed on countries, particularly developing countries, by international legal instruments and various intergovernmental decisions. This marks a growing trend towards coordination and streamlining of the reporting process and cooperation at international and national levels for the purpose of data collection, analysis and dissemination.

14. Issues of implementation, compliance and dispute settlement are gaining increasing attention. Current studies and discussion in international forums may force the review of some existing provisions and provide new ideas for future provisions. Some of the more recent mechanisms of implementation, such as that of "differentiated responsibilities", and of compliance, such as that of public exposure through, inter alia, fact-finding missions, may be of particular concern here.

15. Finally, there is a growing concern about establishing the means for more non-State participation both in negotiations of international legal agreements and in their implementation. In addition, fuller consideration is being given to providing access to non-State actors to the appropriate judicial forums for redress of individual and class grievances at the international level.

Notes

1/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

2/ FCCC/CP/1995/7/Add.1, decision 1/CP.1.

3/ A/AC.237/18 (Part II)/Add.1 and Corr.1, annex I.

4/ See document A/50/25, annex.

5/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

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Addendum

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INTRODUCTION

1. The present report has been prepared by the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat in its capacity as task manager of chapter 39 on international legal instruments and mechanisms of Agenda 21. 1/ It gives an overview of developments in this field since 1993, when the Commission on Sustainable Development at its second session reviewed that chapter.

2. This report is based on material provided for the above-mentioned purpose by the Office of Legal Affairs of the United Nations Secretariat, Division for Ocean Affairs and Law of the Sea; Department for Policy Coordination and Sustainable Development of the United Nations Secretariat, Division for the Advancement of Women; the interim secretariat of the United Nations Framework Convention on Climate Change; the interim secretariat of the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa; the Centre for Human Rights; the United Nations Environment Programme (UNEP); the secretariat of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal; the secretariat of the Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on Substances that Deplete the Ozone Layer; the secretariat of the Convention on the Conservation of Migratory Species of Wild Animals (CMS); the United Nations University (UNU); the Economic Commission for Africa (ECA); the Economic Commission for Europe (ECE); the Economic Commission for Latin America and the Caribbean (ECLAC); the Economic and Social Commission for Asia and the Pacific (ESCAP); the International Labour Organization (ILO); the United Nations Educational, Scientific and Cultural Organization (UNESCO); the International Civil Aviation Organization (ICAO); the World Health Organization (WHO); the World Bank group; the World Meteorological Organization (WMO); the International Maritime Organization (IMO); the International Atomic Energy Agency (IAEA); the World Trade Organization; the Council of Europe; and the International Whaling Commission (IWC).

3. The report drew from the deliberations of an Expert Group meeting of legal experts convened by the Division for Sustainable Development in the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat, in its capacity as task manager for chapter 39, pursuant to the following objectives: to identify basic principles of international law for sustainable development, to consider possible classifications of such principles, and to assess their potential practical implications in a legal context, including their role in the interpretation and application of existing international law in the field. The complete report of the Expert Group meeting is available as a background document.

4. The report also made use of the outcome of informal inter-agency consultations on chapter 39, which took place in January 1995, and the meeting of the task managers in November 1995. A workshop organized by UNEP on International Environmental Law Aiming at Sustainable Development 2/ provided valuable input as well.

I. REVIEWING THE EFFECTIVENESS OF INTERNATIONAL LEGAL INSTRUMENTS AND MECHANISMS FOR SUSTAINABLE DEVELOPMENT

5. Chapter 39 of Agenda 21 is generally concerned with the effectiveness of international legal instruments and mechanisms in assisting States to achieve sustainable development both at the national level and in inter-State relations. This effectiveness may be measured by a number of different factors, including the development of new instruments, mechanisms and standards so as to respond to need, as it arises; the effective integration of environmental and developmental issues; implementation, monitoring and compliance; the participation of developing countries in negotiation, implementation, review and governance; financial and technical assistance to developing countries; dispute avoidance and settlement; coordination and consistency among international legal instruments; and the identification of new and emerging issues in the field of sustainable development. Progress in these areas since 1993, when a review of chapter 39 was last prepared for the Commission on Sustainable Development, is surveyed below.

A. New international legal instruments and mechanisms

6. There have been several new developments, including both new instruments and changes in status such as new signatories, new ratifications, new parties, new protocols, amendments, and relevant decisions of conferences of parties.

7. The World Conference on Human Rights adopted the Vienna Declaration and Programme of Action 3/ in 1993. The United Nations Convention on the Law of the Sea 4/ entered into force on 16 November 1994, and two new agreements were adopted for its implementation: the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 5/ (1994), and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 6/ (1995).

8. Both the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, 7/ and the Convention on Nuclear Safety (IAEA document INFCIRC/449, 5 July 1994) were adopted and opened for signature in 1994. Also in 1994, the Copenhagen Amendment to the Montreal Protocol entered into force.

9. In 1995, the International Labour Conference adopted the Convention concerning Safety and Health in Mines (No. 176) and a protocol to the Labour Inspection Convention of 1947, which extends labour inspection activities to the non-commercial services sector.

10. There is a new protocol to the 1979 ECE Convention on Long-range Transboundary Air Pollution, and the 1994 Protocol on Further Reduction of Sulphur Emissions to the 1979 ECE Convention on Long-range Transboundary Air Pollution has been adopted. An ECE regional conference on transport and the environment, to promote environmentally sound modes of transport, will be held

in 1996. The draft guidelines for the Conference were adopted by the Preparatory Committee of the conference and shall be developed into binding legal instrument(s) applicable to transport.

B. New standards and codes of conduct

11. The following new standards related to sustainable development have also been adopted: an International Safety Management Code for the International Convention for the Safety of Life at Sea (SOLAS Convention, 1974); an International Code of Ethics on International Trade in Chemicals (issued by UNEP in 1994); and a Global Programme of Action for Protecting the Marine Environment from Land-based Activities (November 1995, under the auspices of UNEP).

12. The 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks is expected to promote further international standards for the conservation and better management of such fish stocks. The promotion of international standards concerning the transport of dangerous goods in the ECE region is under way.

13. ILO is looking at standard-setting as related to a number of human rights issues, ranging from inter alia, child labour issues which have been placed in the agenda of the 1998 session of the International Labour Conference for general discussion and possible consideration of new standards, to the relation of international labour standards to trade. The Organisation for Economic Cooperation and Development (OECD), as well, has produced a study on trade and labour standards.

14. The World Trade Organization (WTO) Agreement on Technical Barriers to Trade recognizes the right of World Trade Organization members to set standards, including environment-related standards, and encourages them to use international standards. It also requires notification from World Trade Organization members when those standards, if they have significant trade effects, are not based on international standards.

C. Effective integration of environmental and developmental issues

15. Integration lies at the heart of the concept of sustainable development. It is the interdependence of the social, developmental, environmental and human rights aspects of life that define sustainable development. Principles 3 and 4 of the Rio Declaration on Environment and Development 8/ integrate not only the concepts of environment and development and but also the needs of generations, both present and future. Principle 25 states that peace, development and environmental protection are interdependent and indivisible.

16. Law (international and domestic) contributes to sustainable development to the extent that the respective rules are applied in a comprehensive and holistic way. Law-making at the domestic and international levels requires coordination among all relevant actors and interests.

17. Sustainable development will be enhanced if competing legal rules strive as a first step towards compatibility and as a second step towards mutual support. Conflicts of rules should be avoided and/or settled in accordance with relevant provisions such as those contained in the Vienna Convention on the Law of Treaties. 9/ Thus, interrelationship is about the consistency of rules and balanced outcomes that take into account all the relevant forces of society. Interrelationship as a principle contributing to the achievement of sustainable development depends on the respect of each legal domain for the scope and content of adjacent bodies of law.

18. Interrelationship is also about procedure and institutions (courts, and so forth) mandated to settle conflicts of law. When considering specific cases, bodies that are called upon to decide on conflicts of rules, should, in conformity with article 31 (3) (c) of the Vienna Convention, take into consideration rules of environmental, social, human rights and other sustainable development law applicable to the parties to the dispute, within the limits of their terms of reference and charters. This would suggest that those bodies should have the appropriate legitimacy and expertise, for example, by incorporating experts from all the areas of law related to sustainable development law. Another possibility would be some kind of overarching jurisdiction including experts from all relevant fields.

19. Some progress in trying to achieve integration through legal means has been made, inter alia, by the increased recognition of the principles of the Rio Declaration on Environment and Development in new international legal instruments, by the addressing of issues of an interdisciplinary and/or ecosystem-related nature (for example, biodiversity, desertification, forests), and by the establishment of mechanisms for the purpose of providing financial and technical cooperation.

D. Implementation, monitoring and compliance

20. One of the most important aspects of implementation, monitoring and compliance involves ensuring that all States have the opportunity to participate equally in negotiations and follow-up. This issue is discussed in the following section.

21. The effectiveness of international legal instruments and mechanisms largely results from implementation of and compliance with their provisions at the national level. This may prove more difficult where there is a lack of specificity in the objectives and obligations of the agreement concerned, and where certain parties crucial to the objectives of the agreement are absent. In general, much broader participation is needed in a number of instruments.

22. The lack of secure, sustained and predictable financial resources, insufficient institutional capacity and human resources and, in some cases, inadequate access to technologies, may all hinder implementation and compliance.

23. Most of the legal instruments related to sustainable development currently call for periodic reporting by parties, often to the Conference of the parties, as the major form of verification. Monitoring, especially of scientific

information, may also be required. These approaches are important and may be effective, but they meet with difficulties in some countries largely for two reasons: the overwhelming number of reports required and the difficulties in collecting and assessing national-level data. Streamlining of reporting requirements and sharing of information at the international level may constitute an essential response to these problems.

24. Negotiation of additional instruments may overcome some of the impediments to implementation and enhance effectiveness. Examples include the additional instruments that were renegotiated for the International Tropical Timber Agreement, the London and Copenhagen amendments to the Montreal Protocol, and the Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982. The major obstacle hindering the acceptance of the Convention was removed with the adoption of this 1994 Agreement.

25. The monitoring of sites inscribed on the World Heritage List has been improved through recent decisions of the Assembly of the States parties to the Convention for the Protection of the World Cultural and Natural Heritage, which has set up a mechanism for systematic monitoring of the state of conservation of the inscribed sites. Each site will be studied periodically by international experts, and the resulting reports presented to the World Heritage Committee. In addition, the General Conference of UNESCO, at its twenty-eighth session (Paris, October-November 1995), adopted a Statutory Framework of the World Network of Biospheres Reserves, formulated with the objective of enhancing their effectiveness and strengthening common understanding, communication and cooperation. The Statutory Framework defines the objectives, criteria and designation procedure for biosphere reserves and includes a delisting procedure.

26. Monitoring of the Convention on the Elimination of All Forms of Discrimination against Women 10/ has been substantially improved by expanding its information base and by attempting to clarify the norms contained in the Convention.

27. Successful implementation may be encouraged through the assistance of convention secretariats and United Nations organizations in drafting of model legislation and provision of other good offices; advisory services; capacity-building; information and education; and provision of innovative financial mechanisms. Guidelines for implementation and regional cooperation structures are also considered to have contributed to implementation. The role of non-State actors is considered to be crucial in both the drafting and the implementation stage.

E. Participation of developing countries

28. Participation of all countries concerned, in particular developing countries, in the negotiation, implementation, review and governance of international agreements and instruments should be promoted and supported, including appropriate provision of technical and financial assistance.

29. Many international legal instruments in the field of sustainable development contain specific provisions and, in some cases, funds for this purpose. Technical and legal assistance is provided by secretariats, and United Nations organizations provide some financial support to developing countries in order to enable them to participate in the expert and other meetings that they have convened.

30. There is evidence of a growing awareness of the need for special funding for participation. For example, a voluntary fund was established for the purpose of assisting developing countries, in particular the least developed among them, especially those most concerned with the subject-matter, to participate in the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. A trust fund was opened under the 1979 ECE Convention on Long-range Transboundary Air Pollution for facilitating the participation of parties in Central and Eastern Europe with economies in transition in meetings organized under the Executive Board. Another new voluntary fund was established in 1994 by the International Whaling Commission to allow for participation from developing countries in future small cetacean-related work.

31. The General Assembly established a voluntary fund for the participation of developing countries in the negotiations leading to the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, and, in its resolution 45/212, the Assembly also decided to establish a special voluntary fund to finance the participation of developing countries in the negotiating process of the Intergovernmental Negotiating Committee for a Framework Convention on Climate Change. This fund has been extended since the adoption of the United Nations Framework Convention on Climate Change 11/ (welcomed by the Assembly in its resolution 47/195), and its purpose was extended as well to include support to the participation of developing countries stricken by drought and desertification, and some contributions to the trust fund are earmarked for specific countries or groups of countries. It has therefore been necessary for the secretariat to establish a set of priorities for the allocation of financial support among countries.

32. Unfortunately, at the same time that the need for funds appears to be well established, the amount of available funding is being reduced. One response to this problem would be to convene meetings of expert groups in regions that could be more easily accessible to developing countries. This is one of the approaches taken by the International Maritime Organization as regards the London Convention. Another approach is to extend the provisions of an instrument, such as was done with the revised London Convention, by incorporating a requirement for financial and technical assistance.

F. Financial and technical assistance

33. Chapter 39 calls for the provision to developing countries of technical assistance for the purpose of enhancing their national legislative capabilities in the field of environmental law; it also states (para. 39.9) that technical

and financial support should include assistance in building up expertise in international law particularly in relation to sustainable development.

34. Ongoing provision of financial, legal and technical assistance has been reported. Governments, convention secretariats and United Nations organizations, as well as non-governmental organizations, have organized national and regional seminars, workshops and training programmes to address the implementation of particular conventions, and have provided fellowships.

35. For example, UNU is organizing a series of activities focusing on training of faculty in the field of international environmental law in order to strengthen capacity-building in developing country academic institutions. The United Nations Centre for Human Settlements (Habitat), UNEP and the United Nations Institute for Training and Research (UNITAR) organized their second training course on environmental law and policy (March/April 1995), designed to familiarize 30 government lawyers and officials from all geographical regions with the provisions of major environmental instruments, and to compose national legislative strategies for implementing relevant conventions. UNEP and the United Nations Centre for Human Settlements (Habitat) have also introduced a "training-by-attachment" programme through which participants from developing countries have the opportunity to receive on-the-job training.

36. Over the last two years, the World Bank has provided both financial and technical assistance to more than 70 countries concerning environment-related laws and regulations in the field of environmental law and sustainable development, including advice on the implementation at the national level of sustainable development-related international conventions.

37. IAEA organized a training course on nuclear law for African countries in cooperation with, inter alia, OECD and the Commission of the European Union. IAEA also organizes annual training seminars on nuclear law and safety standards for lawyers from Eastern and Central Europe.

38. The secretariat of the United Naticns Framework Convention on Climate Change has developed a programme of technical assistance called CC:COPE, with two main programme elements: CC:INFO, an information exchange programme undertaken jointly with UNEP, and CC:TRAIN, a joint training programme with the United Nations Development Programme (UNDP), UNITAR and the Global Environment Facility (GEF), with the purpose of promoting policy dialogue at the national level and building national capacities for implementation of the Framework Convention.

G. Dispute avoidance and settlement

39. Dispute avoidance plays an important role in the field of sustainable development because frequently harm cannot be reversed and therefore compensated, or the original situation re-established. Furthermore, environmental harm in particular is largely a matter calling for prevention, and this should also prevail in inter-State relations. Procedures of reporting, monitoring, fact-finding, information and consultation are helpful in any endeavour aimed at dispute avoidance.

40. Mechanisms to elicit compliance may be grouped, in a partial overlapping manner, in three broad categories: (a) an incentive-based system that aims both at making adhering to treaties more attractive and at building the capacity to comply with them, (b) an information-based system that seeks to maximize the transparency of implementation measures at the national level, and (c) a system of responses to actual breaches or situations of non-compliance, including, for example, sanctions and compensation. 12/ Practice has shown that disputes between States have been dealt with mostly through negotiations and consultations between the parties involved.

41. More informal means of dispute avoidance and/or settlement have become increasingly important. The role of the "good offices" of the secretariat is worth emphasizing, particularly the importance of informal advice alongside regular dialogue. The availability of a complaint procedure, such as exists within the Basel Convention, is also considered a method of dispute avoidance/settlement.

42. An important innovation in the field of dispute avoidance and settlement has been the inclusion of a set of procedures based on those of the United Nations Convention on the Law of the Sea of 10 December 1982 in the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, which invites States parties to an existing treaty or convention, or States negotiating a new treaty or convention concerning the subject-matter covered by the United Nations Convention on the Law of the Sea of 10 December 1982, to consider adopting a procedure whereby disputes concerning the interpretation or application of such a treaty or convention are submitted to the International Tribunal for the Law of the Sea.

43. Another development concerns the 1979 ECE Convention on Long-range Transboundary Air Pollution. Its 1994 Protocol on Further Reduction of Sulphur Emissions contains an article on dispute settlement that provides for more elaborate measures than those of previous protocols. Article 9 introduces the possibility of accepting compulsory means of dispute settlement via submission to the International Court of Justice or a special arbitration procedure, and the creation of a conciliation commission. The Protocol also provides for the establishment of an implementation committee and procedures for its review of compliance.

44. The United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, provides that the Conference of the Parties shall consider and adopt procedures and institutional mechanisms for the resolution of questions that may arise with regard to the implementation of the Convention (art. 27). The Convention also provides for the adoption of annexes on conciliation and arbitration in the case of disputes. Deliberations on these two items will begin in February 1996.

45. ILO has a comprehensive tripartite supervisory system that affects all aspects of implementation, compliance and dispute settlement. Emphasis is on consultation and clear information. There are also means by which complaints of representatives can be made by States or delegates to the International Labour

Conference or employers' or workers' organizations, where breach of a ratified convention is alleged. Complaints may in fact be entertained even where none of the relevant conventions have been ratified by the State concerned, since there is an obligation upon all members under the ILO Constitution to observe the principles of freedom of association.

46. Article 11 of the Vienna Convention for the Protection of the Ozone Layer provides for a procedure for settlement of disputes between parties to the Convention and the Montreal Protocol. The Montreal Protocol also provides for a specific channel for dispute settlement in its article 8.

47. At the 3rd meeting of the Conference of the Parties to the Basel Convention, in September 1995, the proposal to establish a standing body, called the Compliance Committee, under the Basel Convention was discussed. The Conference of the Parties to the United Nations Framework Convention on Climate Change, at its first session, decided to establish an ad hoc open-ended working group of technical and legal experts to study all issues relating to the establishment of a multilateral consultative process and its design, for the resolution of questions regarding the implementation of the Convention (art. 13). 13/

48. International legal instruments may encounter difficulties in the area of dispute avoidance and settlement, as has been the case with the 1946 International Convention for the Regulation of Whaling, where no mechanism for the settlement of disputes, other than the adoption of the will of the majority, has been put into place. Problems may also arise where a dispute settlement mechanism has not yet entered into force, as is the case with the 1978 amendment to the 1972 London Convention. A revised London Convention might incorporate the 1978 settlement procedures or alternatively refer to the United Nations Convention on the Law of the Sea of 10 December 1982, article 237.

49. In general, it is recognized that considerably more analysis needs to be undertaken in this area. One of the major challenges may be to increase the types of mechanisms available in resolving disputes that involve both State and non-State actors.

H. Coordination and consistency among international legal instruments

50. Chapter 39 refers to the two issues of coordination and consistency among international legal instruments and mechanisms. The former involves the need to clarify and strengthen the relationship between existing international instruments or agreements in the field of environment and relevant social and economic agreements or instruments; the latter, the aim of identifying and preventing, or resolving, where necessary, actual or potential conflicts, particularly between environmental and social/economic agreements or instruments, with a view to ensuring that such agreements or instruments are consistent.

51. The identification of principles of international law for sustainable development should facilitate coordination and consistency among international

legal instruments and mechanisms. This will be the case especially when such principles are used more widely in developing new legal instruments and in interpreting the application of existing instruments.

52. Cooperation frequently takes place around specific functional issues, where different organizations are able to contribute according to those issues' relevance to their particular terms of reference. For example, the secretariat of the Basel Convention, ECE, the United Nations Committee of Experts on the Transport of Dangerous Goods, IMO, the Inter-organization Programme on Sound Management of Chemicals, the International Programme on Chemical Safety, the European Commission and OECD all cooperate in the area of hazardous wastes. ECE, IMO and ICAO work together on issues related to transport of dangerous goods; and cooperation has been established among ECE, UNEP, ILO, the Food and Agriculture Organization of the United Nations (FAO), the United Nations Industrial Development Organization (UNIDO), WHO, and OECD on the Inter-organization Programme on Sound Management of Chemicals which includes harmonization of trade provisions.

53. Improved coordination among convention secretariats is relevant to coordination and consistency among international legal instruments. The establishment of a forum whereby the secretariats can meet, discuss and agree to coordination activities on overlapping priority issues is considered to be important. UNEP has been striving towards improving both administrative and substantive coordination with the secretariats of the conventions that it administers.

54. Joint projects could be developed between conventions and efforts made to share and streamline information required for, or submitted through, national reports. Studies such as the "synergy study" undertaken by the secretariat of the Convention on Biological Diversity, which looks at the relationships among the objectives, provisions and programmes of the Convention on Biological Diversity, 14/ the Ramsar Convention, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention for the Protection of the World Cultural and Natural Heritage, the United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, particularly in Africa, the United Nations Framework Convention on Climate Change, the United Nations Convention on the Law of the Sea of 10 December 1982 and the Convention on the Conservation of Migratory Species of Wild Animals are important first steps towards these goals. Similarly, reviews of instruments, such as that being undertaken by IMO of the conventions that it administers, in light of the entry into force in November 1994 of the United Nations Convention on the Law of the Sea of 10 December 1982, constitute crucial steps towards coordination and consistency.

II. NEW AND EMERGING ISSUES IN THE FIELD OF SUSTAINABLE DEVELOPMENT

55. The United Nations Conference on Environment and Development (held in Rio in 1992) heightened awareness of the interrelationship among economic, social, environmental and institutional issues, and helped to illuminate a number of areas where more work needs to be done. Much of that work pertains to national

policies, plans and laws. However, several of the new issues require international attention and international legal instruments or frameworks. In general, increasing attention is being given to the role and effectiveness of non-legally binding (in other words, "soft") law, to strengthening of environmental impact assessment, and to issues of compliance and enforcement. More specific issues are discussed below.

56. A protocol to provide petition procedures for the Convention on the Elimination of All Forms of Discrimination against Women has been initiated by the Committee on the Elimination of Discrimination against Women (CEDAW) at its fourteenth session.

57. The second session of the Conference of the Parties to the Convention on Biological Diversity, (Jakarta, 6-17 November 1995) established an open-ended working group to commence work, "as a matter of urgency", on the development of a protocol on biosafety, in the field of the safe transfer, handling and use of genetically modified organisms (GMOs), focusing on the transboundary movement of such organisms. The protocol should be completed in 1998.

58. The Conference of the Parties to the United Nations Framework Convention on Climate Change, at its first session (Berlin, 28 March-7 April 1995), inter alia, adopted the Berlin Mandate, 15/ which launches a new process for strengthening developed country commitments to reducing greenhouse gas emissions beyond the year 2000, through the adoption of a protocol or another legal instrument. The process is being undertaken by an ad hoc working group open to all parties, and the work should be completed as early as possible in 1997. It was also agreed to launch a pilot phase for "activities implemented jointly" (this term being a substitute for the term "joint implementation"). 16/

59. The Council of the European Union is currently considering a proposal for a Council regulation on "Environmental measures in developing countries in the context of sustainable development" to provide financial assistance and technical expertise to assist developing countries to integrate environment and development into the planning process.

60. During 1995, IAEA began preparatory work on a new convention on the safe management of radioactive waste. In addition, the General Conference of IAEA has requested the Director-General to intensify IAEA's activities in support of member States to prevent illicit trafficking in nuclear material, and to prepare further proposals on this topic.

61. A new waste assessment framework will be included in the revised London Convention which will be applicable to all legal marine environment protection instruments, independent of the source of the wastes.

62. UNEP and FAO are proceeding with the preparations for a convention on the prior informed consent (PIC) procedure. The adoption and signing of such a convention is expected in early 1997. Increased international support for the development of an international legally binding instrument in this field has been noted, and UNEP considers that the future PIC convention might be the first global instrument negotiated after the United Nations Conference on Environment

and Development to adopt a new approach to overlapping environmental and trade regimes.

63. The fact that a new institutional arrangement, the Inter-governmental Forum on Chemical Safety, has been established signifies progress in the joint International Programme on Chemical Safety of ILO, UNEP and WHO. A memorandum of understanding concerning the establishment of the Inter-organization Programme on Sound Management of Chemicals, among ILO, FAO, OECD, UNEP, UNIDO and WHO, entered into force in March 1995. Work is proceeding among ECE, the Economic and Social Council and ILO on the development of a globally harmonized system of classification and labelling of chemicals, and the reformatting of the Recommendations on the Transport of Dangerous Goods into a model regulation.

64. Issues of liability and compensation for environmental damage and of the application of environmental norms by military activities are also gaining widespread attention. ECE has identified a number of issues that might need attention at the national level, including, inter alia, the application of environmental impact assessment and the setting of consistent environmental objectives for military activities.

65. The need for the development of a regional Caspian Sea convention will be assessed and discussions continue on a possible new convention on the international carriage of dangerous goods by inland waterways.

66. At its third session in 1995, the Commission on Sustainable Development established the Ad Hoc Intergovernmental Panel on Forests. It will elaborate and strengthen the Non-legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (Forest Principles), 17/ adopted at the United Nations Conference on Environment and Development in 1992. The Panel held its first session in September 1995.

67. Other specific areas that have been mentioned as deserving future attention include, inter alia, persistent organic pollutants and heavy metals (preparatory work initiated for developing protocols to the 1979 ECE Convention on Long-range Transboundary Air Pollution); joint implementation and tradable permits; protection of marine biodiversity; protection of inland waters; protection of the soils; mountain ecosystems; introduction of genetically modified and alien organisms; child labour; and environmental impact assessment. Two broader, procedural treaties have also been suggested: one would specify the obligations for assisting developing countries in the implementation of international legal instruments, and the other might contain guidelines for compatibility between trade and environment law.

68. Of continuing and growing importance as emerging concepts in sustainable development are popular participation and the contribution of non-State actors to achieving the objectives of international legal instruments.

Principles of international law for sustainable development

69. Another "new" issue is the identification of the principles and concepts that underlie international law for sustainable development, which has emerged primarily for the following two reasons: the recognition that sustainable development has gained currency as a legitimate topic of international law, and the need, therefore, to understand what sustainable development entails from a legal perspective. Furthermore, and perhaps of greatest significance, is the inherent integrative structure of sustainable development which makes it pertinent and legally relevant to other areas of international law, including, for example, environmental law and trade law.

70. Principles may perform a variety of functions in the international legal process, including (a) assisting in the development of new legal instruments, (b) assisting in the interpretation and application of treaty and other obligations, (c) establishing norms of a substantive nature, (d) establishing obligations of a procedural nature and (e) assisting in the elaboration of detailed obligations. The role of principles in the interpretation and application of existing legal obligations, particularly treaty obligations, is especially important. In 1995, both the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat and UNEP, acting jointly and in full consultation, organized two meetings of experts that addressed this issue.

71. From 13 to 15 November 1995, UNEP, in cooperation with the Center for International Environmental Law (United States of America) convened the first meeting of the Expert Group Workshop on International Environmental Law Aiming at Sustainable Development in order to respond to decision 18/9 18/ (1995) of the Governing Council of UNEP in which the Governing Council requested the Executive Director to develop a position paper on this topic and to prepare a study on the need for and feasibility of new international environmental instruments aiming at sustainable development. The Workshop was composed of qualified academic and governmental lawyers in their personal capacities, taking into account geographical representation; and was based on the premise that, in moving towards sustainable development, international environmental law is inspiring new and innovative concepts, principles and ideas, and developing facilitative and enabling mechanisms and procedures in areas such as implementation and compliance and dispute avoidance and settlement. The Workshop recognized the continuing process of progressive development of international environmental law towards the goals of sustainable development to which the Rio Summit had provided a powerful impetus. It worked within the context of the long-term Programme for the Development and Periodic Review of Environmental Law for the 1990s (Montevideo Programme II), 19/ adopted by the Governing Council of UNEP at its seventeenth session (1993). The overall objective of the Workshop was to contribute to the further development of a legal framework for the implementation of Agenda 21.

72. The Workshop agreed on an outline for the position paper and recommended modalities for the preparation of a feasibility study. It was decided to have two more meetings during 1996. The outcome of the Workshop will be presented to the meeting of senior government officials to review the Montevideo Programme II

and subsequently to the Governing Council of UNEP at its nineteenth session (1997).

73. An Expert Group Meeting on the Identification of Principles of International Law for Sustainable Development, was organized by the Division for Sustainable Development of the Department for Policy Coordination and Sustainable Development of the United Nations Secretariat, in Geneva from 26 to 28 September 1995.

74. The Meeting had before it the following objectives: to identify basic principles of international law for sustainable development, to consider possible classifications of such principles, and to assess their potential practical implications in a legal context, including their role in the interpretation and application of existing international law in the field. The principles considered were not limited to traditional relations of public international law but were in fact also relevant to private international law (conflict of laws with regard to transnational relations between individuals and various kinds of organizations, whether incorporated or not) and international administrative law (with regard to relations between individuals or organizations and public authorities).

75. In carrying out its tasks, the Expert Group worked within the framework established by the Rio Declaration on Environment and Development and Agenda 21. It was agreed that these instruments provided the essential basis for identifying and assessing principles of international law for sustainable development. Nevertheless, it was clear from the practice of States and other members of the international community since the United Nations Conference on Environment and Development, that certain principles set forth in those instruments had acquired a particular relevance in terms of their international legal consequences. The Expert Group considered it appropriate to take into account that practice, as reflected in the activities of States and other members of the international community before international legislative forums, international courts, tribunals and other dispute settlement forums, and in the developments in national law that sought to implement the Rio principles.

76. The full text of the report of the Expert Group, including the annotated principles, is contained in a background document that will be before the Commission on Sustainable Development at its fourth session.

Notes

1/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex II.

2/ Expert Group Workshop on International Environmental Law Aiming at Sustainable Development, organized by UNEP in cooperation with the Center for International Environmental Law, Washington, D.C., 13-15 November 1995.

3/ Report of the World Conference on Human Rights, Vienna, 14-25 June 1993 (A/CONF.157/24 (Part I)), chap. III.

4/ Official Records of the Third United Nations Conference on the Law of the Sea, vol. XVII (United Nations publication, Sales No. E.84.V.3.), document A/CONF.62/122.

5/ General Assembly resolution 48/263, annex.

6/ A/50/550, annex I; see also A/CONF.164/37.

7/ A/49/84/Add.2, annex, appendix II.

8/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex I.

9/ United Nations, Treaty Series, vol. 1155, No. 18232.

10/ General Assembly resolution 34/180, annex.

11/ A/AC.237/18 (Part II)/Add.1 and Corr.1, annex I.

12/ See the Report of the Nordic Research Project on the Effectiveness of Multilateral Environmental Agreements (Helsinki, November 1995), p. 68.

13/ See document FCCC/CP/1995/7/Add.1, chap. I, decision 20/CP.1.

14/ See United Nations Environment Programme, Convention on Biological Diversity (Environmental Law and Institutions Programme Activity Centre), June 1992.

15/ Document FCCC/CP/1995/7/Add.1, chap. I, decision 1/CP.1.

16/ Ibid., decision 5/CP.1.

17/ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992, vol. I, Resolutions Adopted by the Conference (United Nations publication, Sales No. E.93.I.8 and corrigendum), resolution 1, annex III.

18/ See document A/50/25, annex, decision 18/9.

19/ See Official Records of the General Assembly, Forty-eighth session, Supplement No. 25 (A/48/25), annex, decision 17/25, annex.